ORIGINAL

ANN BAVENDER*
KAREN L. CASSER*
ANNE GOODWIN CRUMP*
VINCENT J. CURTIS, JR.
RICHARD J. ESTEVEZ
PAUL J. FELDMAN*
ERIC FISHMAN*
RICHARD HILDRETH
FRANK R. JAZZO
ANDREW S. KERSTING*
KATHRYN A. KLEIMAN
EUGENE M. LAWSON, JR.
HARRY C. MARTIN
GEORGE PETRUTSAS
LEONARD R. RAISH
JAMES P. RILEY
KATHLEEN VICTORY*
HOWARD M. WEISS

* NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET

ROSSLYN, VIRGINIA 22209-3801

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

FLETCHERHEALD@msn.com

FRANK U. FLETCHER
(1939-1985)
ROBERT L. HEALD
(1956-1983)
PAUL D. P. SPEARMAN
(1936-1962)
FRANK ROBERSON
(1936-1961)
RUSSELL ROWELL
(1948-1977)

RETIRED
EDWARD F. KENEHAN

CONSULTANT FOR INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS
SHELDON J. KRYS
U. S. AMBASSADOR (ret.)

OF COUNSEL
EDWARD A. CAINE*

WRITER'S NUMBER
(703) 812-

MAY 30 1996

May 30, 1996

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VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 96-98 -- Local Competition
Reply Comments of Roseville Telephone Company

Dear Mr. Caton:

Transmitted herewith is the original and twelve copies of the Reply Comments of Roseville Telephone Company in the above-captioned matter.

If you should have any questions, please communicate directly with me.

Very truly yours,

Paul J. Feldman
Counsel for
Roseville Telephone Company

PJF/jr
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ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98

REPLY COMMENTS OF ROSEVILLE TELEPHONE COMPANY

Roseville Telephone Company ("RTC"), by its attorneys, hereby submits its Reply Comments in response to the Commission's Notice of Proposed Rulemaking, released April 19, 1996 (the "Notice") in the above-captioned proceeding.

As RTC noted in its initial Comments in this proceeding, while the Telecommunications Act of 1996 (the "1996 Act")[1] is intended to create "a pro-competitive, de-regulatory national policy framework"[2] for the local exchange market, it is clear that Congress intended that incumbent LECs be treated fairly during the transition to a fully competitive environment, and thereafter. Congress did not intend to destroy the economic viability of incumbent LECs. Accordingly, in its initial Comments, RTC urged the Commission, in enacting regulations under Section 251 and 252, to:

> -ensure that LECs are obligated to resell services at wholesale costs only to *bona fide* telecommunications carriers, not to large end-users, or

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[1] Pub. L. No. 104-104, 110 Stat. 56.

[2] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (hereafter, *"Joint Statement"*).

affiliates of such end-users established for the purpose of providing service to that end-user;

- fairly allow incumbent LECs to recover substantial costs already prudently invested in local networks, including appropriate portions of joint, embedded and common costs;

-ensure that wholesale rates for resale of services not exclude costs that are not recovered in retail rates, as a result of federal and state universal service policies;

-ensure that "technical feasibility" for interconnection requests take into account the actual network technology used by the LEC, and the structure of the LEC's network at the time of the request, rather than a theoretically possible network; [3]

-ensure that interconnection be required only upon the receipt of a *bona fide* request which would include a commitment to pay the LEC for any design, engineering or equipment costs incurred by the LEC if the entity requesting interconnection fails to take interconnection service once offered by the LEC; and

-recognize that the purpose of Section 251 and 252 is to create facilities-based competition in the local exchange market, not to reduce access costs for interexchange carriers ("IXCs"), and accordingly, to recognize that the interconnection and unbundled element provisions of Section 251 may not be used by IXCs to sidestep the FCC's Part 69 access charge structure.

In these Reply Comments, RTC addresses comments on the last point above, *i.e.*, assertions by IXCs that Section 251 allows IXCs to use interconnection or purchase unbundled network elements to terminate interexchange calls. These assertions are inconsistent with the language and intent of the 1996 Act. RTC also addresses pricing

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[3] RTC also asserted that LECs should not be required to build additional facilities to accommodate interconnection requests. No such obligation is stated in the 1996 Act, and if Congress had intended such an obligation, it would have provided for allocation of construction costs. It did not do so.

standards for interconnection and unbundled network elements.

I. THE 1996 ACT DOES NOT PERMIT IXCS TO AVOID PART 69 ACCESS CHARGE REQUIREMENTS THROUGH INTERCONNECTION OR PURCHASE OF NETWORK ELEMENTS.

In paragraphs 159-165 of the *Notice*, the Commission tentatively concludes that the interconnection and unbundling requirements of Section 251 cannot be used by IXCs solely to terminate interexchange calls, and thus sidestep access charges established in Part 69 of the Commission's Rules. Specifically, the Commission notes that under Section 251(c)(2), LECs are only obligated to provide interconnection where the request is for the "transmission and routing of telephone exchange service and exchange access." However, an IXC carrier requesting interconnection for the purpose of originating or terminating interexchange calls would not be providing exchange service, and would not be offering access services, but rather would be receiving access services. In regards to the use of unbundled elements under Section 251(c)(3), the Commission notes that IXC use of such provisions solely for origination or termination of interexchange calls would be contrary to Congress' obvious focus in Section 251 on creating local exchange competition, and would effect a fundamental jurisdictional shift by placing interstate access charges under the administration of state commissions. This last result would be contrary to Section 251(i), a provision saving all current Commission authority under Section 201 of the Communications Act, which is the source of the Commission's Part 69 access charge authority.

RTC fully agrees with the Commission's conclusions, and its reasoning. However, it is not surprising that a few IXCs would argue to the contrary.[4] The Comments of MCI Telecommunications Corp. present the IXC arguments most fully, and its assertions will be addressed herein.

In addressing the explicit requirement of Section 251(c)(2)(A) that interconnection only need be offered for provision of exchange service or exchange access service, MCI makes the surprising assertion that IXCs have all along been providing exchange access service to their end-user subscribers. MCI Comments at page 79. This dubious assertion fails to address, however, the role of LEC interstate access tariffs, if access is in fact a service provided by IXCs to end-users. MCI's assertion also fails to explain why IXC "provision" of access services to end-users is not set forth in any IXC tariff.

MCI also asserts that the definition of "network element" in Section 251(c)(3) should be read broadly so as not "to frustrate [Congress'] intent to promote competition....." Comments of MCI at page 78. Yet MCI makes no showing as to how the bypassing of access charges by IXCs would promote competition in the local exchange market, which is the obvious focus and intent of Section 251.

MCI makes a valiant but fatally flawed attempt to demonstrate that applying Section 251(c) to exchange access for IXCs would not effect a fundamental shift of

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[4] It should be noted, however, that Sprint Corporation did not contest the Commission's conclusion that IXCs cannot use Section 251 solely to originate or terminate interexchange calls. Comments of Sprint Corp. at pages 67-69.

jurisdiction over access charges from the Commission to the states. First, MCI notes the presence of Section 251(i), which provides that nothing in Section 251 should be construed to limit or affect the Commission's authority under Section 201 of the Communications Act, (*i.e.*, the source of the Commission's authority for Part 69 access charges.)[5] Comments of MCI at page 81. But this misses the point: MCI and the IXCs' proposed use of Section 251(c) to avoid access charges contradicts the authority saved in Section 251(i). Perhaps in recognition of this point, MCI then asserts that the Commission would retain control over access charges, in the "front-end" by setting rules for rates, and in the "back-end" by reviewing complaints that a LEC is charging too much for access. MCI Comments at pages 81-82. But what if a state commission, pursuant to the mandatory arbitration provisions of Section 252(b), forces a LEC to charge access rates that are unreasonably low? There appears to be no provision for Commission review of such actions, and accordingly, the Commission will have lost authority over this interstate service.

In sum, Section 251 clearly was not intended to allow IXCs to use

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[5] *See* MTS and WATS Market Structure, 93 FCC 2d 241, 255 (1983). LDDS WorldCom asserts that Section 251(i) need not be read to limit IXC use of interconnection and purchase of unbundled elements to avoid access charges, since the Section 201 jurisdiction "saved" by Section 251(i) applies to many areas other than access charges, and no specific mention is made of access charges in Section 251(i), while a section of the telecommunications bill passed by the Senate (Section 251(k) of S.652) specifically protecting the access charge rules was removed in the House-Senate Conference. Comments of LDDS WorldCom at pages 74-76. However, it is RTC's understanding that Section 251(i) was specifically added in Conference as a substitute for the removed Senate provision, and as such, took on the same role as Section 251(k), albeit with broader language.

interconnection and purchase of network elements solely to originate and terminate interexchange calls and avoid access charges. Nothing in Section 251 requires such a reading, and because it would result in a jurisdictional shift of control over access charges, such a reading is clearly contradicted by Section 251(i). Moreover, because of the important role of access charges in Federal universal service policies, if the Commission is to revise the access charge regime, rational policy making requires such revisions to be made in a proceeding where related issues can be addressed and revised at the same time. There certainly is no need to address only part of the broad picture in this proceeding.

II. RATES FOR INTERCONNECTION AND PROVISION OF NETWORK ELEMENTS MUST PROVIDE FOR RECOVERY OF TOTAL COSTS, INCLUDING JOINT, COMMON AND EMBEDDED COSTS.

Section 252 (d)(1)(A) provides that the rates for interconnection and unbundled elements shall be based on cost "determined without reference to a rate of return or other rate-based proceeding..." In paragraph 129 of the Notice, the Commission seeks comments on usage of a total service long run incremental cost ("TSLRIC")-based methodology. Yet, while the entire momentum of the Commission's proposal is towards use of TSLRIC methodology, the Notice admits substantial potential problems "if there are significant joint and common costs among network elements, even if such costs are determined on a forward-looking basis." The Notice even admits that some LRIC methodologies may not even recover all forward-looking costs (and doesn't even raise

the possibility of recovery of embedded costs). And while it was not a surprise to see that many potential competitors to incumbent LECs filed comments enthusiastically supporting the use of TSLRIC, rational rule making policy (and the Fifth Amendment) would suggest that such a methodology should be dropped or severely altered. The bottom line is that joint, common and embedded costs must be recovered, if LECs are to remain viable and continue to provide service to subscribers, as well as interconnection and network elements to competitors.

Joint costs are costs that are incurred to provide a family of services, but which are not directly attributable to any one service in that "family." Joint costs do not change if any service is added or deleted from the service family. Common costs are the costs incurred by a company as a whole which are not attributable to any individual service or family of services. Since joint and common costs are necessarily incurred for the LEC to offer all of its services, including provision of interconnection and network elements to competitors, all services should bear a portion of these costs. This reason by itself demonstrates the inadequacy of TSLRIC as a fair and adequate methodology for calculating costs.[6]

Yet, even if a portion of joint and common costs were added to TSLRIC, this

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[6] *See, e.g.,* Comments of Sprint at page 45 ("it is appropriate to add, to TSLRIC costs, a reasonable amount of contribution to shared costs..."). While the U.S. Department of Justice ("DOJ") advocates use of TSLRIC as the best approach to encourage immediate competition in the local market, even it admits that "TSLRIC rates may need to be adjusted to permit recovery of forward-looking joint and common costs that may not be included in the sum of element-by-element TSLRIC rates." DOJ Comments at page 27.

would still be an insufficient measure of total cost of providing service, since it would exclude embedded costs. These costs were properly incurred under the watchful eyes of the Commission, state regulators, and IXCs, and in compliance with LEC obligations to provide high quality service. Such costs, once incurred, cannot now be ignored, either under vague and general assertions that they result from excessive expenditures[7], or under academic theories advocating payment only for ideal (and thus non-existent) maximum efficiency networks. In fact, service to incumbent LEC subscribers and to LEC competitors is provided with the existing LEC network, not a theoretical one. No such theoretical network will be made available by LECs in any time in the near future without unacceptable levels of depreciation for current equipment. Indeed, in light of the rapid growth of technology, it is debatable whether any carrier could ever retain the "best available" technology for long.

The result of use of TSLRIC without substantial additions will not only be unfair and irrational denial of cost recovery to incumbent LECs, but will be the creation of inappropriate economic signals to competitors that are contrary to the purpose of the 1996 Act. Disallowing recovery of joint, common and embedded costs will force LECs

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[7] *See, e.g.,* Comments of MCI at pages 73-74 (complaining of "over built" LEC plant with excess capacity). Again, expenditures for plant are extensively reviewed by Federal and state regulators, and by IXCs in challenging access charge rates. And while MCI goes on to admit that much of the allegedly "over built plant" is in that status as a result of technological advances, it should be recognized that if there were additional "over built plant" at least some of it will become useful and used in provision of service, assuming that competition in the local market increases the overall size of that market.

to price network elements at below their true economic cost. In such a case, market entrants will be given the incentive to purchase elements from the LEC, rather than construct their own facilities.[8] Surely this was not the intent of Congress.

In sum, fairness to LECs, rational policy, and conformance with Congressional intent require that if TSLRIC is used to establish prices for interconnection and network elements, such a methodology must be supplemented with an allocation of joint, common and embedded costs.

III. CONCLUSION

In enacting Sections 251 and 252, Congress clearly intended to create facilities-based competition in the local exchange market, not to reduce access costs for IXCs. The record in this proceeding demonstrates that, consistent with Congressional intent, nothing in Section 251 requires LECs to offer interconnection and network elements to IXCs solely to originate and terminate interexchange calls. Indeed, such a requirement would result in a jurisdictional shift of control over access charges, and thus is clearly contradicted by Section 251(i). Moreover, because of the important role of access charges in Federal universal service policies, if the Commission is to revise the access charge regime, rational policy making requires such revisions to be made in a proceeding where related issues can be addressed and revised at the same time.

The record in this proceeding also demonstrates the inadequacy of TSLRIC as a

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[8] *Cf.* Comments of DOJ at page 29.

fair and adequate methodology for calculating costs for provision of interconnection and network elements. If TSLRIC is used as a basis for calculating costs of providing such services, it must be supplemented with an appropriate portion of joint, common and embedded costs.

Respectfully submitted,

ROSEVILLE TELEPHONE COMPANY

By: _____
George Petrutsas
Paul J. Feldman

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
11th Floor, 1300 North 17th Street
Rosslyn, Virginia 22209
(703) 812-0400

May 30, 1996

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Reply Comments of Roseville Telephone Company was served this 30th day of May, 1996, via United States First Class Mail, postage prepaid on:

Ms. Janice M. Myles*
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, DC 20554

David W. Carpenter
Peter D. Keisler
David L. Lawson
David M. Levy
Sidley & Austin
1722 Eye Street, N.W.
Washington, DC 20006
Counsel for AT&T Corp.

Andrew Joskow
John Hayes
John Henly
Economic Regulatory Section
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W., Room 8104
Washington, DC 20001

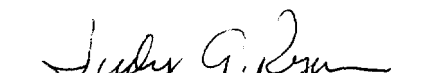
Donald J. Russell
Luin Fitch
Telecommunications Task Force
Antitrust Division
U.S. Department of Justice
555 4th Street, N.W., Room 8104
Washington, DC 20001

Peter A. Rohrback
Linda L. Oliver
Kyle D. Dixon
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, DC 20004
Counsel for LDDS WorldCom

Don Sussman
Larry Fenster
Charles Goldfarb
Mark Bryant
Mary L. Brown
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, DC 20006

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, DC 20036

* By hand



Judy G. Ryan